

MONTANA TRANSPORTATION COMMISSION
Telephone meeting
January 20, 2004

The Montana Transportation Commission met via conference call on January 20, 2004 to review staff recommendations regarding the low bid tendered December 18, 2003 by Border States Paving Inc. for the Oswego East & West project.

The meeting was called to order at 4:07 pm with the following participants:

- Commission Chair Shiell Anderson, Vice Chair Nancy Espy, and commission members Meredith Reiter, Dan Rice, and Kevin Howlett.
- MDT staff: Director Dave Galt, Deputy Director Jim Currie, Chief Counsel Tim Reardon, Chief Engineer Joel Marshik, Construction Engineer Mark Wissinger, and Glendive District Administrator Ray Mengel.
- Federal Highway Administration (FHWA) Operations Engineer Ted Burch
- Montana Contractors' Association Executive Director Cary Hegreberg
- Dan Thompson and Korey Bender from Border States Paving Inc., Scott Lafond from Fisher Sand and Gravel, Curt Martin of Martin Construction.
- Fort Peck Tribe Acting TERO Director Darrell Red Eagle and A & S Development General Manager Ann Lambert

Chairman Anderson explained the format for the meeting: first, we will have the department give their viewpoint, have interested parties give theirs, and then have discussion for the commission.

Galt – Chairman Anderson, members of the Commission, we've got the Oswego project that's under review. We've had a bid opening, Border State Paving submitted the low bid, however, it is 24.6% over the engineers' estimate. That's substantially over the engineers' estimate that we had. The unit prices that are of main concern are for the crushed aggregate course. The unit price for 130,000-some cubic meters is the highest price we've ever seen for this item. We have met with the contractor. We simply can't afford this project. It pushed this project over what we anticipated and budgeted for. We've got three contracts [bidders] that have high prices for the gravel. We recognize that. We recommend not awarding this project. We are over our guidelines for award. We will have to go back and redesign this project and see if can't bring this project back into something we can afford.

Howlett – in sending back for a redesign, do you anticipate being able to find some bids with acceptable estimates?

Galt – we anticipate being able to lower the cost, whether or not we can lower it by two million dollars, I don't know. This is fairly straightforward. We are here and ready to answer any questions.

Reiter – was the same sub used for all three bidders?

Wissinger – yes. We don't know for sure. There were 4 bidders. It would appear looking at the unit prices it would appear that at least three of them were using the same quote for the work. For the fourth, it would appear this was not the case.

Anderson – why don't we let Mr. Thompson or anyone else that has input go at this time, bearing in mind we need to be done by 5 pm.

Dan Thompson – our feeling is that there is a fair bit to say. We tried to extend the phone call time. We were disappointed in step two of the process; we felt it was not completed and we apologize to the commission for that. After reading the minutes it was apparent that there were several questions from the meeting that were not answered and we were not

called back to answer them. Before going through the minutes, we would like to go through a summary.

1. We were the low bidder within 10 percent of other bidders on the project. We assumed that this project had a high priority based upon the letting date.
2. The engineers' estimate was significantly off on the crushed aggregate course. To believe if project were re-let, to believe you would get a lower price is unrealistic. Gravel was seven dollars below, which equates to \$950,000 alone. We don't feel this number is representative of the work to be done. If this were accurate, then this meeting would not be necessary. Precedent was set with the Battlefield East project to award a project when bidders were close even though outside the guidelines for award.

Only four questions were asked of us. One, how much exploration did you do? We were never asked for permission to open the bid documents or to review them. We are still here to answer questions. There are costs associated with rebidding the project. I think that if the same unit prices are used for the next estimate, I think the prices will still be off even if different plans are used. Without going further into the minutes of the meeting, are there any further questions anyone has at this point?

Lafond – after reading through the minutes and speaking with Dan Thompson, it's my understanding that the biggest item is the crushed aggregate course. There is significant concern that this price is out of line. We dug at least six different locations, researched past prospecting files, and visited with MDT Wolf Point folks about other possible options. Oftedal did their own prospecting extensively and used their own crushing numbers. The low, second and third bidders used our prices.

The engineers' estimate for Oswego was \$18 a meter for the item; for Sidney West the price was \$9 per metric ton. Depending on what conversions one uses, the estimate is \$19.80 to \$21.20, or roughly \$20 per ton, in this case the bids are roughly \$5 per meter higher. This amounts to a difference of two bucks a ton, plus or minus. If you look at the haul road, the cost of building the haul road, the physical haul (one contractor estimated a cycle time of 72 minutes), compared to Sidney which has a one-mile haul, add to that the water and the tribal requirements, it's not hard to see how this goes from \$20 to \$25.

Lambert – I would like some clarification, I apologize, I didn't have time to thoroughly review those minutes. Was the TERO tribal tax figured into the engineers' estimate at three percent? Galt – yes.

Lambert – I was briefly reading about this Hamburg testing. Was that what you used?
Bender – that is a test MDT implemented recently to ensure they get higher quality pavement mixes. In the overall cost of the project, we felt that was a higher risk item.
Lambert – that's where you brought up the mixed S? Bender – yes.

Lambert – the primary issue is the discrepancy between the quantities of gravel?

Galt – we don't have an issue with the quantities, we have an issue with the price.

Lafond – that was me trying to get a handle on the differences between the estimates.

Lambert – how realistic is that in terms of getting in lower than we have now?

Galt – there are other ways to build this road had we anticipated that the cost of aggregate was going to be as high as \$26 per unit. We would take this back to engineering and add those opportunities to the contract so that the less expensive opportunities could be added to the project.

Lambert – the degree of difficulty regarding the access road, what was that in relation to? I didn't get all the comments, couldn't hear.

Galt – that was relative to the site the folks were anticipating using and the impact to the county and what would have to be done to the road. We adequately addressed that in the engineers' estimate.

Bender – I would ask a couple of questions, one is for Mr. Galt. What options has MDT considered for reducing the cost?

Galt – Cement-treated base course would be one possible alternative.

Bender – the next question I have is, how did you address the additional haul road costs in your estimate?

Galt – I will ask Mark Wissinger to address that.

Wissinger – after you were contacted by Suzy Althof, we looked at your estimate and made some adjustments to the estimate based on the information you provided. We could justify a higher price based on that information but the bid was still substantially outside the guidelines.

Bender – that didn't take into account in the original estimate?

Wissinger – it was in a way, there is a cost in every bid we receive with costs associated with haul roads. Based on the information you provided we could see that was going to be a higher cost.

Bender – how much more money did you take into consideration for the higher cost compared to the Sidney West project?

Wissinger – we added two dollars to our estimate to take into account those costs.

Bender – in the original estimate, you're using average bid items over a three-year period.
Wissinger – no, we're not.

Bender – you came up with a unit price for the Sidney West project, with no dead haul; you came up with a lesser unit price for this project even though this project had an 8-mile dead haul. The difference in the haul price is the most important factor.

Bender – we were dissatisfied with the meeting that we traveled in to Helena for.

Anderson – let's ask the commissioners to ask the questions that are on their minds, after that, time permitting, we can open up for other questions. We need to get those answered so we can make a decision.

Howlett – I have a concern about something, not being able to afford it in district 4. I know from our previous discussions and the red book discussions we went through, there's a lot more projects than there is money. I know this project needs to be done, but where does the additional money come from? What has to go if this one is funded? If there is some way possible for redesign to have this come in at a lower cost, that seems to make sense to me.

Nancy – I represent district 4. As you know, we need a lot of work done. Every district needs a lot of work done. If they are over the engineers' estimate, that sends up a red flag, and if it's over as much as this one was, it put this project totally out of reach for us financially for us to accept. There doesn't seem any way to do this without redesigning and rebidding. I really appreciate you gentlemen coming and visiting with us on this. This is simply out of our budget. We have to follow our own guidelines, please remember that.

Dan Rice – I hope you got my email on this. I will not be voting on this; our company has a relationship with the sub-contractor, Fisher, or will, this upcoming season in Wyoming. I have a couple of rather practical questions and then one quality question. The engineers'

estimate on this item, the base course, from the notes appears to be 14.79 cents per cubic meter. Wissinger clarified the engineers' estimate was \$18 per cubic meter. Rice – where did the \$14 come from? Galt – we don't know. Rice – it's in the notes of the meeting. Wissinger – that may have been in reference to the adjoining project, Frazier East and West, where we had prices in the 13 to 15 dollar range. Marshik – that was built six years ago.

Rice – did we understand there was a longer haul on this and that the water would have to come from a longer distance when we developed the original estimate?

Wissinger – I don't recall all the factors, the price we came up with in that estimate was based in part on the adjoining project. We try to look at several factors, one of which is the availability of sources in the area. That's in part why we came up with \$18, for this quantity that is a fairly high estimate. Based on our conversations with the low bidder, we were able to raise that estimate by two dollars to \$20 a cubic meter, but that is still outside guideline for award.

Rice – our estimate for the same material isn't substantially different than this. Wissinger – not substantially different, however the Sidney West job was a smaller quantity, that was 86,000 meters. This is 138,000. There is an association between price and quantity. Usually we would see a lower price for a larger quantity.

Reiter – was the quality and stripping of the aggregate similar to this one? In these pits?
Wissinger – I don't know. The district may have an answer to that question.

Lafond – we crushed that project. The quality and type of deposits were similar. The main difference is that the material for Oswego is several miles on bad gravel away from the project. On Frazier East and West it was adjacent to the road.

Rice – there's one thing that has bothered me and if I'm wrong I'll ask for a blanket apology. In reading these minutes, I think there's been an impression clearly made by these minutes that between Border States and Fisher and potentially associated subcontractors that they were taking unreasonable and unfair advantage of the state of Montana. There's reference to tying up the pits on the Hi-line. If we feel that, we should come out in the open. If they are rumors, I don't feel that they should come out in these discussions. I know Fisher; they are a good employer in eastern Montana. I don't think we should take a swing at them. If I've misinterpreted this, I'm glad; if not, I'm worried. I'm also worried, in our estimate on this, if we were to take the price that we received on the Sidney project for this bid item, with no consideration of the haul or anything else, and simply substitute that price, the low bid is still 15 percent over our estimate. I'm concerned our estimate may have seriously been in error. We're still way over, not just with one, but with four reputable contractors. That is a serious worry of mine and I'll leave it at that.

Burch – I'd like to address that comment that was in the minutes. One thing I would like to clarify, these are minutes, notes taken, they are not verbatim. There is always something lost in the translation. If the comment I asked during that meeting, there was no intent whatsoever to imply impropriety. It's a common issue nationwide is materials sources. If you're in the business of providing materials, yeah you're going to try and get your materials sources lined up. The question was more, if there were widely available sources up there, did the district know of any? If there was any interpretation to the contrary, I apologize, there was no intent there. Does that answer your concern? Rice – yes.

Anderson – you made adjustments to other bid items after getting the bid?

Wissinger – no, we did not. Our estimate was very much in line with the bids we received with all the other elements on this project. Anderson – we're basically looking at the base material that skews all of these. You made an adjustment from \$18 to \$20, which elevated the bid 15% or more above. Wissinger – it's still approximately 20%. Anderson – which is twice the allowable limit for award. Attempts to bring it within an acceptable range have not met with success. Second, it puts other projects in that district under funded if we go forward. Any more questions from the commissioners?

Hegreberg – I would like to go on record on behalf of the Montana Contractors' Association once again supporting awarding projects to the lowest responsible bidder. You have a competitive field of reputable contractors bidding on this job. Private companies, with their own capital, can do a better job estimating than anyone else can. We acknowledge any owner has the discretion of not entering into a contract if they don't have funding for the job. If that's the bottom line to this situation, we acknowledge that. I would like to once again express concern about the process used to determine the engineers' estimate and the role of those estimates in awarding projects. Commissioner Espy mentioned the need to follow guidelines. We would concur that the commission and the department follow guidelines. However, we ask that these guidelines be reviewed. I'm here often in this situation, representing the interests of the contracting community, and discussing low bids exceeding those engineers' estimates. I understand the position the commission is in with funding and I wanted to go on record to once again reiterate supporting awarding projects to the lowest responsible bidder.

Anderson – Korey, would you like to have additional input?

Bender – I want to talk about how the engineers come up with their estimate. The department missed an excellent opportunity. We opted to meet face-to-face, rather than Glendive, and we offered to go over any bid documentation. We showed up in good faith, hoping to have a constructive conversation, not necessarily to justify our bid, but to explain how our estimate could be so far away from the engineers' estimate. I'm disappointed in how this went. We have a lot of documentation that would be helpful.

Anderson – we have made some changes to how we approach these contracts and allow for discussion so people don't feel like they're shut out.

Thompson – as a contractor, you would have left a million dollars on the table with the Sidney project; that is a good reason not to use historical data. I'm not sure about the red book; indications are you saved a million on that project, where did those funds go?

Lambert – on behalf of the tribes, are supportive of awarding this project to the lowest responsible bidder. We are in a depressed area, unemployment rates are dramatically high, we would like to have the opportunity for employment for members and income to tribal members, this is critical to us.

Anderson – anyone have a feeling on this; want to make a vote?

Howlett – would like to comment on Ann's comments, recognizing the difficulty that I know is there, and as we try to work through these projects and working on reservations. Ann, for your information, I'm a tribal member on the Flathead and served on the council. If we don't have the money and there's the opportunity to possibly to redesign this and as a part of this redesign we could, meaning MDT, could look at every option in terms of source material, including that owned by the tribe and not necessarily by a private party. I don't want to see these other projects put on hold. I want to see this one done. But if we can see it done at a lesser amount.

Anderson addressed Chief Counsel Reardon and asked for his advice.

Reardon – under the specifications, if you don't award a contract within 45 days of the letting, and don't extend the timeframe, it dies of its own volition. That's your specification, if you need to make a motion, the answer is no. In fairness to the process, I think it would be good to take a vote.

Espy – I make a vote to reject this project. Thanks to everyone for taking the time to meet with us. I hope to get this down to a price we can afford to award.

Howlett – I'll second.

Chairman Anderson took role call for the vote: Espy – yes, Howlett – yes, Rice – abstain, Reiter – yes, and Anderson – yes.

Anderson – thank you all for your time and input. That concludes our business. Thank you and goodbye.

The meeting adjourned at 4:55 pm.

Shiell Anderson, Chairman
Montana Transportation Commission

David A. Galt, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission